

APPEAL NO. 041282
FILED JULY 20, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on May 5, 2004. The hearing officer determined that the respondent (claimant) was entitled to supplemental income benefits (SIBs) for the first and second quarters.

The appellant (carrier) appeals on sufficiency of the evidence. The file does not contain a response.

DECISION

Affirmed.

Eligibility criteria for SIBs entitlement are set forth in Section 408.142(a) and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102 (Rule 130.102). The carrier appeals both the direct result and good faith criteria of Section 408.142(a) and Rule 130.102(b). The claimant proceeds on the basis that he has returned to work in a position relatively equal to his ability to work.

The claimant, a truck driver, sustained a compensable left knee and right shoulder injury on _____. The parties stipulated that the qualifying periods at issue are from September 2, 2003, through March 1, 2004. The claimant had surgery on both his left knee and right shoulder in 2002. The claimant's restrictions include frequent lifting up to 20 pounds and occasional lifting up to 50 pounds with no climbing ladders, kneeling, or squatting. On February 26, 2003 (well before the first quarter qualifying period), the claimant obtained employment at a ranch driving an elderly couple and doing errands, shopping, etc. for \$7.00 an hour. The claimant's hours would vary from less than 40 hours a week to more than 40 hours a week with the average for the two qualifying periods being about 36 hours a week. The hearing officer determined that the claimant earned less than 80% of his average weekly wage as a direct result of the claimant's impairment and that the claimant had attempted in good faith to obtain employment commensurate with his ability to work.

The carrier argues that the claimant had an ability to do more and that the claimant did not engage in searches for work that would result in greater income (the carrier's vocational rehabilitation counselor did refer the claimant to a job that paid \$8.00 an hour but that job was filled when the claimant applied). The factors emphasized by the carrier in challenging the hearing officer's determinations on appeal are the same factors it emphasized at the hearing. The significance, if any, of those factors was a matter for the hearing officer in resolving the issues before him. Nothing in our review of the record reveals that the challenged determinations are so against of the great weight of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709

S.W.2d 175, 176 (Tex. 1986). Accordingly, no sound basis exists for us to disturb those determinations on appeal.

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **ZURICH AMERICAN INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**LEE F. MALO
12222 MERIT DRIVE, SUITE 700
DALLAS, TEXAS 75251.**

Thomas A. Knapp
Appeals Judge

CONCUR:

Chris Cowan
Appeals Judge

Robert W. Potts
Appeals Judge